

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY OF ALMATY, KAZAKHSTAN, ET AL.,

Plaintiffs,

15-cv-5345 (JGK)

- against -

ORDER

MUKHTAR ABLYAZOV, ET AL.,

Defendants.

JOHN G. KOELTL, District Judge:

The Court has reviewed the Report and Recommendation of Magistrate Judge Parker dated March 15, 2023. See ECF No. 1739 (the "Report"). Pursuant to 28 U.S.C. § 636(e)(6), the Report certifies that the plaintiffs have set forth a prima facie case for contempt based on defendant Ilyas Khrapunov's failure to pay the plaintiffs \$221,285.31 in attorney's fees to compensate the plaintiffs for Khrapunov's discovery misconduct. Report at 2; see also ECF No. 1494. Nonetheless, the Report recommends that no order of contempt be issued because Khrapunov has demonstrated that he is unable to pay the sanctions at this time. Report at 5-6. However, the Report does recommend that a judgment be issued against Khrapunov in the amount of \$221,285.31 and that federal post-judgment interest rates be applied to that judgment. Id. at 6. The Report further recommends that Khrapunov be required to submit a sworn declaration quarterly updating the Court on his ability to pay and his payment of the judgment. Id. The Report recommends that such sworn declarations be submitted beginning

June 30, 2023 and at the end of each quarter thereafter (i.e., September 30, December 31, March 31, and June 30) until the judgment is paid. Id.

After a thorough review, the Court concurs with the findings of Magistrate Judge Parker and adopts them. Where the magistrate judge has certified facts constituting contempt, the district court must make an independent determination of the facts certified and consider any additional evidence. 28 U.S.C. § 636(e)(6). In this case, neither party has objected to Magistrate Judge Parker's factual findings and legal conclusion that the plaintiffs have satisfied the *prima facie* elements of contempt based on Khrapunov's failure to comply with a clear and unambiguous court order. See Parademics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc., 369 F.3d 645, 655 (2d Cir. 2004). The parties also have not objected to Magistrate Judge Parker's recommendation that no order of contempt should issue because Khrapunov has shown plainly and unmistakably that he is unable to pay the amount ordered. See Huber v. Marine Midland Bank, 51 F.3d 5, 10 (2d Cir. 1995) (explaining that inability to pay is a defense to civil contempt). After an independent review, the Court adopts these findings and conclusions, which are all supported by straightforward evidence in the record. The Court therefore will not issue an order of contempt at this time.

The Court also finds, however, that judgment should be issued

against Khrapunov for \$221,285.31; that federal post-judgment interest rates should be applied to that judgment; that Khrapunov should submit a sworn declaration quarterly updating the Court on his ability to pay and his payment of the judgment; and that these sworn declarations should be submitted beginning June 30, 2023 and at the end of each quarter thereafter until the judgment is paid. Khrapunov did not object to these recommendations, which are fully justified by the record before the Court.

CONCLUSION

For the foregoing reasons, the Court adopts Magistrate Judge Parker's Report and Recommendation and **grants in part and denies in part** the plaintiffs' motion for an order holding Ilyas Khrapunov in contempt and for entry of judgment for the amount of past due sanctions. See ECF No. 1713. The Clerk is directed to enter a judgment in favor of the plaintiffs and against Ilyas Khrapunov in the amount of \$221,285.31. Beginning June 30, 2023 and continuing until the judgment is paid, Khrapunov shall submit a sworn declaration quarterly updating the Court on his ability to pay and his payment of the judgment. The Clerk is directed to close ECF No. 1713.

SO ORDERED.

Dated: New York, New York
 April 4, 2023


John G. Koeltl
United States District Judge